

NO. 48437-4-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

MANUEL ANTONIO GONZALES, APPELLANT

**Appeal from the Superior Court of Pierce County
The Honorable Elizabeth Martin, Judge**

No. 15-1-00252-1

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court abuse its discretion when it waived all of defendant's discretionary Legal Financial Oblations and only imposed those LFOs mandated by statute?
2. Does this court have discretion to award appellate costs to the State if it prevails in this appeal?

B. STATEMENT OF THE CASE.

On January 20, 2015, Manuel A. Gonzales ("defendant") was charged by Information of two counts of assault in the third degree (Count I, II), one count of obstructing a law enforcement officer (Count III), and one count of resisting arrest (Count IV). CP 1-2. On September 23, 2015, one count of bail jumping (Count V) was added by Amended Information. CP 5-7. Following a jury trial, defendant was found not guilty on Counts I and II and guilty on the remaining Counts III-V. CP 34-38.

On Count III, defendant was sentenced to 364 days with credit for time served with the balanced suspended. 6RP 7. On Count IV, he was sentenced to 90 days with credit for time served and the remaining days suspended. 6RP 8. On Count V defendant was given a first time offender waiver and sentenced to 26 days of credit for time served with no additional time. 6RP 8.

The court waived all discretionary legal financial obligations (LFOs) based on an assessment of defendant's financial circumstances. 6RP 7-8. The court imposed mandatory LFOs including \$500 for a crime victim compensation penalty, \$200 in a criminal filing fee, and \$100 for DNA test. 6RP 9.

C. ARGUMENT.

1. THE COURT WAIVED DEFENDANT'S DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS AND ONLY IMPOSED MANDATORY FEES, INCLUDING A \$200 CRIMINAL FILING FEE.

A court must impose certain mandatory fees on a convicted defendant, including a victim penalty assessment, DNA collection fee, and a criminal filing fee. RCW 7.68.035; RCW 43.43.7541; RCW 36.18.020. Additionally, the court can use its discretion to order the defendant to pay other fees to recoup court costs based on an individualized assessment of the defendant's ability to pay the discretionary fees. RCW 10.01.160. No such inquiry is required for the mandatory fees, which are uniformly imposed by statute and do not take into account a defendant's financial situation. *State v. Lundy*, 176 Wn. App. 96, 102, 308 P.3d 755 (2013). Defendant was not ordered to pay any discretionary LFOs. 6RP 7-8.

The question of whether LFOs were properly imposed is controlled by the clearly erroneous standard. *Lundy*, 176 Wn. App. at 105. A decision by the trial court "is presumed to be correct and should be sustained absent

an affirmative showing of error." *State v. Wade*, 138 Wn.2d 460, 464, 979 P.2d 850 (1999). The party presenting an issue for review has the burden of proof. RAP 9.2(b); *State v. Sisouvanh*, 175 Wn.2d 607, 619, 290 P.3d 942 (2012). If the appellant fails to meet this burden, the trial decision stands. *State v. Tracy*, 128 Wn. App. 388, 294-95, 115 P.3d 381 (2005), *aff'd*, 158 Wn.2d 683, 147 P.3d 559 (2006). Therefore, the defendant has the burden of showing the trial court judge improperly exercised his discretion by showing an affirmative error.

The trial court only assigned mandatory LFO and waived all discretionary LFOs based on defendant's financial circumstances. CP 41. The imposition of mandatory LFOs falls well short of the clearly erroneous standard required to disturb the trial court ruling because mandatory LFOs are imposed uniformly based on statute. *Lundy*, 176 Wn. App at 102, 105. Therefore, the trial court properly imposed all mandatory LFOs to include the \$200 criminal filing fee challenged by defendant.

Defendant's claim that the assigned criminal filing fee is a discretionary LFO is without merit. The criminal filing fee is made mandatory by clear, plain, unambiguous statutory language that does not require statutory interpretation. Plain words do not require statutory interpretation and courts assume the Legislature means exactly what it writes in statutes. *State v. McCraw*, 127 Wn.2d 281, 288, 898 P.2d 838 (1995). A plain and unambiguous statute must be read from the wording of the statute itself. *State v. Tili*, 139 Wn.2d 107, 115, 985 P.2d 365

(1999). A statute is not ambiguous “simply because different interpretations are conceivable.” *Id.* Courts are not required to “discern an ambiguity by imagining a variety of alternative interpretations.” ***Western Telepage, Inc. v. City of Tacoma Dept. of Financing***, 140 Wn.2d 599, 609, 998 P.2d 884 (2000). Courts look to a dictionary to define terms not otherwise defined in the statute. ***State v. Pacheco***, 125 Wn.2d 150, 154, 882 P.2d 183 (1994).

The language of RCW 36.18.020(2) is unambiguous and plainly establishes a \$200 criminal filing fee as a mandatory consequence following the conviction of any adult criminal defendant. The statute reads “Clerks of superior courts shall collect the following fees.” RCW 36.18.020(2). Among the circumstance when the clerk shall collect fess is “Upon conviction...an adult defendant in a criminal case *shall be liable* for a fee of two hundred dollars.” RCW 36.18.020(2)(h) (emphasis added). The language of the statute is plain and not subject to statutory interpretation.

Shall is “used in laws, regulations, or directives to express what is mandatory” and “to express what is inevitable or what seems to be...decreed...to happen in the future.” *Shall*, Webster’s Third New International Dictionary, Unabridged (2002). Shall also creates a mandatory duty or requirement to perform a task. *Shall*, Black’s Law Dictionary (8th ed. 2004). To be liable means “responsible or answerable in law; legally obligated.” *Liable*, Black’s Law Dictionary (8th ed. 2004).

The “shall be liable” language in the statute plainly and clearly obliges an adult criminal defendant to pay a \$200 criminal filing fee following his conviction. RCW 36.18.020(2)(h). The clerk “shall collect” this fee, again indicate a mandatory collection by the clerk. RCW 36.18.020(2). The language contains no ambiguities that require statutory interpretation. Courts have consistently agreed the criminal filing fee is mandatory. *See e.g., State v. Kuster*, 175 Wn. App. 420, 425, 306 P.3d 1022 (2013); *State v. Blazina*, 174 Wn. App. 906, 911, 301 P.3d 492 (2015), footnote 3 (remanded on other grounds); *State v. Lundy*, 176 Wn. App. 96, 103, 308 P.3d 755, 759 (2013); *State v. Clark*, 191 Wn. App. 369, 373, 362 P.3d 309, 311 (2015).

The trial court properly imposed the \$200 criminal filing fee because it is a mandatory LFO required to be imposed by statute. Defendant has failed to show the trial court’s imposition of this statutorily mandatory fee was clearly erroneous. Therefore, this Court should affirm the decision below.

2. THE STATE HAS NOT REQUESTED AN
AWARD OF APPELLATE COSTS AND THIS
COURT HAS THE DISCRETION TO AWARD
THEM IF A COST BILL IS FILED.

The State has not yet requested an award of appellate costs. The State agrees with defendant that this court has the discretion to grant or deny a request for appellate costs once a cost bill has been filed. *State v. Nolan*,

141 Wn.2d 620, 628, 8 P.3d 300 (2000). Should the State prevail in this appeal and file a cost bill defendant may object to the cost bill. The decision of whether to award appellate costs is the prerogative of this court in the exercise of its discretion under RCW 10.73.160 and RAP 14.2.

D. CONCLUSION.

For the foregoing reasons the State respectfully requests defendant's sentence be affirmed.

DATED: AUGUST 23, 2016

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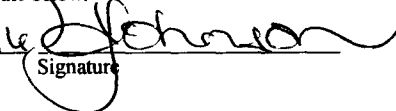


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